

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-03-12
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**ORDER DOCKETING FOR FORMAL PROCEEDING,
DENYING MOTION TO DISMISS,
AND REQUESTING STATUS REPORT**

(Issued January 8, 2004)

On February 7, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution issued in C-03-021, involving Qwest Corporation (Qwest), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which is a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On January 16, 2003, Ms. Kay Stevens filed a written complaint with the Board, alleging that Qwest added an unauthorized charge of \$99.00 on Ms. Stevens' telephone bill for jack installation and wiring. Ms. Stevens alleged that she had been quoted a "one time" charge of \$15.52, plus regular monthly fees, as the cost for installing a second phone line in her home. Ms. Stevens claimed that while she authorized the installation of a second phone line at the cost of \$15.52, she was actually charged \$99.00 for a jack and additional wiring. Board staff identified the matter as C-03-21 and, pursuant to Board rules, on January 22, 2003, forwarded the complaint to Qwest.

Qwest responded to the complaint on January 22, 2003, stating that Ms. Stevens requested a technician install a new jack and that it was Qwest's policy to quote the \$99.00 jack charges, which are listed in Qwest's tariff, to customers who request additional work. Qwest also asserted that the installment order indicated that an offer was made to bill the additional charge over monthly installments. Qwest offered Ms. Stevens a \$49.50 adjustment to her bill.

On January 24, 2003, Board staff issued a proposed resolution describing these events and proposing that the credit offered by Qwest represented a fair resolution of the situation. No party other than the Consumer Advocate has challenged the staff's proposed resolution.

In its February 7, 2003, petition, Consumer Advocate argues that Qwest violated Iowa Code § 476.103 by placing a \$99.00 charge for jack installation and

wiring on Ms. Stevens' bill without authorization. Consumer Advocate also asserts that the proposed resolution issued by Board staff may be a reasonable solution to a private controversy, but it does not maintain the public policy statute against cramming.

On February 27, 2003, Qwest filed a response and a motion to dismiss Consumer Advocate's petition. Qwest argues that it was specifically directed to install a second line and jack inside Ms. Stevens's home and did not perform this work without authorization from the customer and, therefore, the cramming statute of Iowa Code § 476.103 does not apply. Qwest acknowledged that it may have inadvertently misquoted the appropriate charge to Ms. Stevens and, as a result, offered to compromise with the customer to adjust the \$99.00 charge.

On March 4, 2003, Consumer Advocate filed a reply to Qwest's answer and motion to dismiss, again asserting that Qwest added the \$99.00 jack installation charge to Ms. Stevens's bill without authorization and raising factual disputes between Qwest's account of the situation and Ms. Stevens's assertions. Therefore, Consumer Advocate concludes, a formal proceeding is appropriate.

The Board has reviewed the record to date and finds that there is sufficient information to warrant further investigation in this matter. The Board recognizes that there has not been any action in this matter for some time. Therefore, the Board will delay establishing a procedural schedule until January 26, 2004, and will request that

the parties submit a report to the Board regarding the status of this matter on or before that date.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on February 7, 2003, identified as Docket No. FCU-03-12 is granted and docketed for formal proceeding.
2. The motion to dismiss the petition filed by Qwest Corporation on February 27, 2003, is denied.
3. The parties shall submit a status report to the Board on or before January 26, 2004, as described in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 8th day of January, 2004.